No. 84855-6

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

CHAD M. CARLSEN, and SHASTA CARLSEN, husband and wife, individually and on behalf of a Class of similarly situated Washington families; and CARL POPHAM and MARY POPHAM, husband and wife, individually and on behalf of a Class of similarly situated Washington families,

Plaintiffs,

v.

GLOBAL CLIENT SOLUTIONS, LLC, an Oklahoma limited liability company; ROCKY MOUNTAIN BANK & TRUST, a Colorado financial institution; JOHN AND JANE DOES A-K,

Defendants.

BRIEF OF *AMICUS CURIAE* NOTEWORLD LLC

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I. INTRODUCTION

Plaintiffs rely on a novel interpretation of Washington's debt adjusting statute, chapter 18.28 RCW ("Washington Act"), to enforce fee limitations and civil penalties applicable to the debt adjustment industry against businesses outside that industry such as Defendant Global Client Services ("GCS") or Amicus NoteWorld LLC ("NoteWorld"). Businesses such as GCS and NoteWorld are account administrators in the money services industry, not debt adjusters, and are not engaged in debt adjusting. The United States District Court for the Eastern District of Washington has certified the issue of whether account administrators fall within the definition of debt adjusting in the Washington Act to this Court (Questions Nos. 1 and 2).

Neither the legislative history nor the plain language of the Washington Act evidences that the Legislature intended to regulate account administrators as debt adjusters. Additionally, subsequent actions by the Federal Trade Commission ("FTC") and other states to regulate the debt adjusting industry confirm that account administrators are not debt adjusters. Finally, to impose the terms of the Washington Act on account administrators would have a net negative impact on consumers, the beneficiaries of the Washington Act. Accordingly, this Court should

resolve Certified Questions Nos. 1 and 2 by determining that account administrators are not debt adjusters.

II. IDENTITY & INTEREST OF *AMICUS CURIAE*

Amicus NoteWorld is a money services business that provides a wide range of services to consumers, including trust account administration, payment processing, and private loan and lease payment services. NoteWorld, which has been in business for more than 30 years, is licensed in Washington to provide escrow and payment services for seller-financed notes. NoteWorld also is more recently licensed in Washington as a money transmitter and is one of only 16 companies to be licensed as a money transmitter in 37 or more states. Client funds handled by NoteWorld are insured by the Federal Deposit Insurance Corporation.

Although NoteWorld administers trust accounts and provides payment processing services for consumers working with debt settlement companies, NoteWorld is not a debt settlement company or a debt adjuster, nor does it hold itself out as such a company.[1] NoteWorld does not negotiate with creditors or settle debts. Rather, NoteWorld receives funds for the purpose of accumulating a balance to be used as the consumer directs for settlement of their debts or otherwise. The consumer

[1] *See* NoteWorld's website, available at http://www.noteworld.com/OurServices/DebtReduction/NotDSC (explaining that NoteWorld is not a debt settlement company).

maintains control over the funds at all times and may authorize disbursement of funds for settlement, or may withdraw funds for any other purpose. In exchange for its account administration services, NoteWorld charges nominal maintenance and other account-related fees typically paid by the consumer and as permitted by the Washington Escrow Agent Registration Act, chapter 18.44 RCW, and the Washington Uniform Money Services Act, chapter 19.230 RCW.

NoteWorld has been named as a defendant to a putative class action lawsuit, also filed by Plaintiffs' counsel, which states claims similar to the claims alleged in this case. *See Wheeler v. NoteWorld, LLC, et al.*, Case No. CV-10-202-LRS. Accordingly, NoteWorld has a substantial interest in ensuring that the Court resolves the certified questions according to the plain language and intent of the Washington Act.

III. ISSUES OF INTEREST TO NOTEWORLD

A. Whether an account administrator that administers trust accounts and provides transaction processing services is engaged in "debt adjusting" as defined in RCW 18.28.010(1), when the Washington Act was not intended to apply to account administrators and when recent guidance from the FTC and other states clarifies that account administrators are not debt adjusters (Certified Question No. 1).

B. Whether the exclusion in RCW 18.28.010(2)(b) of the Act encompasses account administrators when it provides that the term "debt adjuster" does not include entities doing business under laws relating to a wide range of separately regulated money services businesses (Certified Question No. 2).

IV. STATEMENT OF THE CASE

Although NoteWorld does not agree with all of the parties' characterizations of the facts as set forth in their briefs, in the interest of efficiency, NoteWorld will not repeat a discussion of the transactions giving rise to the underlying district court action.

V. ARGUMENT

To resolve the certified questions posed by the district court, this Court should determine, based on the plain language of the Washington Act, legislative history, and other authority, that the Legislature did not intend to include account administrators within the definition of debt adjusting. Even if account administrators could be included, however, the Court should determine that account administrators fall under the exclusions for money services businesses in RCW 18.28.010(2)(b).

A. Account Administrators Are Not Debt Adjusters.

In interpreting the definition of "debt adjusting" in the Washington Act, this Court's primary objective is to determine and implement

legislative intent. *Glaubach v. Regence BlueShield*, 149 Wn.2d 827, 832, 74 P.3d 115 (2003). The Court should look first to the statutory language, but when seeking clarification of that language, may look to legislative history to aid in interpretation. *ATU Legislative Council of Wash. v. State*, 145 Wn.2d 544, 553, 40 P.3d 656 (2002). Additionally, this Court may look to federal and other states' authority for guidance. *Clarke v. Shoreline Sch. Dist. No. 412*, 106 Wn.2d 102, 118, 720 P.2d 793 (1986) (Washington courts may look to federal law for guidance on statutory interpretation); *See Wash. State Liquor Control Bd. v. Wash. State Pers. Bd.*, 88 Wn.2d 368, 373–74, 561 P.2d 195 (1977) (Washington courts may look to uniform law provisions for guidance).

1. The Plain Language of the Washington Act Does Not Include Account Administrators.

On its face, the definition of "debt adjuster" excludes account administrators. The Washington Act provides that a "debt adjuster" "includes any person known as a debt pooler, debt manager, debt consolidator, debt prorater, or credit counselor" and "is any person engaging in or holding himself or herself out as engaging in the business of debt adjusting for compensation." RCW 18.28.010(2). "[D]ebt adjusting" includes "receiving funds *for the purpose of* distributing said funds among creditors in payment or partial payment of obligations of a

debtor." RCW 18.28.010(1) (emphasis added). An account administrator, however, receives funds *for the purpose of* accumulating a balance to be used as the consumer directs, as is the case with any other bank account. The consumer, not the account administrator, determines how, when, and if to distribute said funds.

Additionally, other sections of the Washington Act demonstrate that the Legislature did not intend the Washington Act to apply to account administrators. *See State Dep't. of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 10, 43 P.3d 4 (2002) (to clarify a statutory section, the Court may look to the statutory scheme as a whole). For example, RCW 18.28.110 requires every debt adjuster to perform various functions, which are inapplicable to account administrators. Among other requirements, the debt adjuster must distribute to the debtor's creditors at least 85 percent of each payment received, at least once every forty days after receipt of payment. RCW 18.28.110(4). But account administrators are obligated to hold the consumer's funds over an indefinite period of time and are only authorized to distribute those funds to a consumer's creditor if notified that a settlement has been reached. Therefore, an account administrator cannot comply with this statutory requirement without breaching its agreement with the consumer.

RCW 18.28.080, which imposes limits on the fees that may be charged by a debt adjuster, also confirms that the statutory scheme was never intended to and does not apply to account administrators. RCW 18.28.080(1) prohibits the debt adjuster from retaining a fee for debt adjusting services exceeding 15 percent of the total debt. But account administrators do not and cannot base their fees on a percentage of the consumer's debts, as they have no knowledge of the debt amounts. Such information is revealed by the consumer only to the debt settlement company.

RCW 18.28.080(2) also provides that a debt adjuster may not retain a fee until it notifies the creditors that the debtor is engaged in a debt adjusting program. But again, account administrators do not directly communicate with creditors or even have the information that would allow them to do so. Thus, the provisions of the Washington Act confirm that it is incompatible with, and not intended to apply to, account administrators.

2. Application of the Washington Act to Account Administrators Would Hurt Consumers.

The characterization of account administrators as "debt adjusters" would have far-reaching implications that further support distinguishing account administrators from debt adjusters. If the Washington Act applies to both types of entities, then both also would be subject to all

requirements and permissions of the law. Application of RCW 18.28.080 to account administrators would authorize those entities to charge a fee to the consumer equal to 15 percent of their total debt. As a result, the Washington Act would allow the employment of *two* "debt adjusters"—both the actual debt adjuster and an account administrator—and the consumer could pay up to 30 percent of their total debt as and for fees.

Additionally, application of RCW 18.28.110 to account administrators would create consumer and creditor confusion. Because Plaintiffs' interpretation of the Washington Act would require two "debt adjusters" to comply with the same notification requirements for each debt adjusting relationship, the consumer would receive double notice of each contract, debt, and creditor communication. The consumer could easily confuse the services of the account administrator with those of the debt adjuster. Moreover, creditors would experience significant confusion over which of the two debt adjusters has authority to negotiate settlements on the debtor's behalf. The harmful consequences of applying the Washington Act to both debt adjusters and account administrators weigh against applying the law to account administrators.

3. Legislative History Also Supports Excluding Account Administrators from "Debt Adjusting."

The legislative history of the Washington Act supports an interpretation that excludes account administrators from the definition of debt adjusting. In particular, Subcommittee records evidence that the Legislature intended the Washington Act to regulate the activities of what today are referred to as credit counselors, which are entities that act as liaisons between the consumer and creditors to establish a monthly payment plan designed to repay the entire principal balance owed. Judiciary Subcomm. Rec. #1, H.B. 16: Regulating Debt Adjusting (1966) ("Debt adjusters (proraters or credit counselors) contract with a debtor who has multiple creditors to receive one monthly payment from the debtor and distribute that amount, less a fee, to the creditors.");[2] *see also* Leslie E. Linfield, *Uniform Debt Management Services Act: Regulating Two Related—Yet Distinct— Industries*, 28 Am. Bankr. Inst. J. 50, 51 (2009) (traditional credit counselors "would collect a monthly payment from the consumer and forward appropriate portions to each of the creditors.").

Because credit counselors distributed the consumer's payment among the consumer's creditors each month, there was no need for a trust

[2] This legislative history is attached hereto as Appendix A.

account in which the consumer's funds could accumulate. In turn, there was no need for a separate account administrator to manage such an account.

In contrast to credit counselors, today's settlement companies allow the consumer's funds to accumulate, typically in a third party trust account. *See* FTC Telemarketing Sales Rule, 75 Fed. Reg. 48,458, 48,461 (Aug. 10, 2010) (codified at 16 C.F.R. pt. 310) ("FTC Rule") (observing that in today's debt settlement programs, consumers typically save funds "into a dedicated bank account established by the provider."). Once funds have accumulated, the debt settlement company offers the creditor a lump-sum payment of some "appreciable percentage" of the consumer's original debt, typically much less than the principal balance owed. *Id.* at 48,462.

The need for account administrators such as NoteWorld and GCS arose in response to changes in the debt settlement industry after enactment of the Washington Act. Given that account administrators were unnecessary at the time the Washington Act was enacted, the Legislature could not have intended to sweep up the activity of account administrators into the purview of the Act. The legislative history, which should guide the Court's interpretation of the scope of the Washington Act, evidences the Legislature's intent to regulate only the activities of credit counselors distributing monthly payments among consumers' creditors.

4. The Federal Trade Commission Distinguishes Account Administrators from Debt Adjusters.

Washington courts may look to federal law to interpret a state statute when the state and federal statutes "have the same purpose." *Clarke*, 106 Wn.2d at 118. The statutes need not have the same language for the Court to find the interpretation persuasive. *See id.* at 117–19 (analyzing decisions of federal Rehabilitation Act to interpret state anti-discrimination act); *Adkins v. Aluminum Co. of Am.*, 110 Wn.2d 128, 147, 750 P.2d 1257 (1988) (reviewing federal decisions regarding heavy machinery to determine scope of industrial safety act).

In the Consumer Protection Act context, the Legislature has endorsed looking to the FTC for guidance. *See* RCW 19.86.920 ("It is the intent of the legislature that, in construing this act, the courts be guided by final decisions of the federal courts and final orders of the federal trade commission interpreting the various federal statutes dealing with the *same or similar* matters") (emphasis added); *see also Panag v. Farmers Ins. Co.*, 166 Wn.2d 27, 40, 48–50, 204 P.3d 885 (2009). Moreover, the FTC, as an expert in consumer matters, is well suited to articulate the definition of a debt relief or adjusting agency. *See, e.g., Sandoz Pharmacy v. Richardson-Vicks, Inc.*, 902 F.2d 222, 226 (3d Cir. 1990) (noting that court takes an "expansive view of FTC's capacity to define and regulate

unfair trade practices" because of the "FTC's familiarity with the expectations and beliefs of the public, acquired by long experience").

Because the Washington Act refers to the Consumer Protection Act and embodies the same consumer protection goals, this Court should consider FTC rules that directly impact either law. *See* RCW 18.28.185 (defining violation of Washington Act as unfair or deceptive act or practice for purposes of the Consumer Protection Act).

In 2010, after this Court accepted review of the certified questions, the FTC amended the Telemarketing Sales Rule. In those amendments, the FTC distinguishes entities administering dedicated trust accounts such as GCS and NoteWorld from entities providing debt relief services. The FTC Rule and the Washington Act share the purpose of protecting consumers from unfair debt relief practices. *See* FTC Rule, 75 Fed. Reg. at 48,467. Thus, the FTC's distinction between account administrators and debt relief service providers should be instructive to the Court.

The FTC Rule was amended to specifically address the definition of "debt relief service":

> [A]ny service or program represented, directly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of the debt between a person and one or more unsecured creditors or debt collectors, including, but not limited to, a reduction in the balance, interest rate, or fees owed by a person to an unsecured creditor or debt collector.

Id. at 48,466 (codified at 16 C.F.R. § 310.2(m)), 48,458. The FTC Rule identifies three types of discrete business models in the debt relief industry. *See id.* at 48,459–64. The FTC Rule then describes the activities of "credit counseling agencies;"[3] "debt settlement agencies;"[4] and "debt negotiation agencies."[5] Account administrators do not fall under any of these three categories.

The FTC Rule also regulates the use of dedicated bank accounts and explicitly distinguishes the administrators of these accounts from "debt relief service" providers. *Id.* at 48,490–91. The FTC Rule first imposes specific requirements on debt relief services providers regarding the use of dedicated bank accounts.[6] *Id.* But the FTC Rule specifies that

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[3] Credit counseling agencies are profit or nonprofit entities that work as liaisons between consumers and creditors to negotiate debt management plans. *Id.* at 48,459.

[4] Debt settlement agencies help consumers relieve debt by paying off debt in a lump sum, which is generally smaller than the total amount owed to the creditor. *Id.* at 48,461–62. Often, the consumers must enroll in a savings account to accumulate funds for the lump-sum payment to the creditor. *Id.*

[5] Debt negotiation agencies negotiate with creditors on behalf of consumers to lower the consumer's financial obligations. *Id.* at 48,464. These firms do not attempt to implement the full debt repayment plan like credit counseling agencies, and they do not attempt to make lump-sum discharge payments like debt settlement agencies. *Id.*

[6] The requirements are (1) the account is located at an insured financial institution; (2) all funds remain the property of the consumer and any interest payments are paid to the consumer; (3) the agency holding the funds is independent and not controlled by the debt relief provider; (4) the debt relief provider cannot give or accept compensation in exchange for referrals; and (5) the consumer must be permitted to withdraw from the debt relief service at any time without penalty. *Id.* at 48,490–91.

account administrators like GCS and NoteWorld are not debt relief service providers:

> This requirement does not prevent an intermediary that is not an insured financial institution from providing services in connection with the account as well. For example, GCS and Noteworld Servicing Center provide account management and transaction processing services relating to special purpose bank accounts that clients of debt settlement companies use. *If such an intermediary is used, the bank and the nonbank both are "entities administering the account" under the Final Rule.*

Id. at 48,490 n.445 (emphasis added). Finally, the FTC Rule prohibits fee splitting "between the entity or entities administering the account *and* the debt relief service provider." *Id.* at 48,490–91 (emphasis added).[7] This presupposes that the entities administering the account are not debt relief service providers.

Thus, the FTC, informed by a public process and input from groups ranging from attorneys general to consumer protection groups to debt relief agencies themselves, issued a comprehensive amendment that clarifies the definition of a debt relief service provider and clearly excludes account administrators from that definition. This Court should

[7] The FTC also distinguishes between the fees that may be charged by debt relief service providers and the fees that may be charged by account administrators: "The Rule does not prohibit an independent entity that holds or administers a dedicated bank account meeting the above criteria from charging the consumer directly for the account." *Id.* at 48,491. This statement provides further evidence of the distinction between the two entities.

find that interpretation persuasive and hold that dedicated bank account administrators are not debt adjusters under the Washington Act.[8]

5. The Uniform Debt-Management Services Act ("UDMSA") Also Distinguishes Account Administrators from Debt Adjusters.

The distinction between debt adjusters and account administrators also is confirmed by the UDMSA, issued by the National Conference of Commissioners on Uniform State Laws in 2005. The UDMSA provides for comprehensive regulation of the debt adjusting industry. *See generally* UDMSA (2008).[9] To date, six states and the Virgin Islands recently have enacted the UDMSA into law.[10] The UDMSA distinguishes between "providers" of debt management services, who are subject to regulation under the UDMSA, and persons who contract with providers to provide services such as the maintenance of a trust account, who are not directly

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[8] Serious preemption concerns also would be raised if the Court includes account administrators within the scope of the Washington Act, as this would directly conflict with the FTC Rule and subject account administrators to sharply inconsistent standards under state and federal laws. *Compare, e.g.*, RCW 18.28.110 (requiring distributions of at least 85 percent of debtor's payments at least every 40 days) *with* 16 C.F.R. § 310.4(a)(5)(ii) (providing that dedicated trust account belongs to debtors). Because a practical reading of the Washington Act excludes account administrators from the definition of debt adjuster, the Court should interpret the Washington Act in a manner consistent with that reading to avoid a conflict with the FTC Rule.

[9] The UDMSA is available at http://www.udmsa.org/pdf/2008final.pdf.

[10] Colo. Rev. Stat. § 12-14.5-201 (2010); Del. Code Ann. tit. 6, § 2401A (2010); Nev. Rev. Stat. § 676A.010 (2010); R.I. Gen. Laws § 19-14.8-1 (2010); Tenn. Code Ann. § 47-18-5501 (2010); Utah Code. Ann. § 13-42-101 (2010); V.I. Code Ann. tit. 12A, § 7-401 (2010).

regulated by the uniform law. UDMSA, Comment to Section 2, at 13; Section 22 & Comment, at 54-57.

Although Washington has not adopted the UDMSA, this Court may consider this model act as persuasive authority. *Cf. Wash. State Liquor Control Bd.*, 88 Wn.2d at 373–74 (looking to Model Administration Procedure Act for definition of "person" although Washington's APA did not adopt definition of "person"); *see also Mauzy v. Gibbs*, 44 Wn. App. 625, 634–35, 723 P.2d 458 (1986) (looking to portion of Model APA that state had not adopted as persuasive authority). Thus, the UDMSA, as well as the fact of its adoption by other states, illustrates the national trend of distinguishing debt adjusters from account administrators.[11]

B. The Washington Act Excludes a Wide Range of Money Services Businesses, Including Account Administrators.

Even if account administrators could be characterized as debt adjusters under the Washington Act, they fall under the exclusions from the definition of debt adjuster in RCW 18.28.010(2)(b). The Legislature expressly excluded a wide range of money services businesses when defining "debt adjuster," including but not limited to banks, consumer

[11] Additionally, because many account administrators and debt settlement companies operate in multiple states, an interpretation of debt adjusting that is consistent with the uniform approach helps ensure compliance with applicable regulations nationwide. *See*

finance companies, consumer loan companies, and similar regulated businesses even if not specifically enumerated. *See* RCW 18.28.010(2)(b).

In their briefs, the parties discuss this exclusion solely with regard to banks, even referencing it as the "banking" exclusion. But both the expansive language and legislative intent of the exclusion, RCW 18.28.010(2)(b), demonstrate its scope is much broader. *See State Dep't. of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d at 9–10 (courts look to plain language and legislative intent to interpret statutes).

RCW 18.28.010(2)(b) excludes a broad category of business from regulation under the Washington Act, not just banks. The exclusion applies to "[a]ny person . . . doing business under and as permitted by any law of this state or of the United States *relating to*" a variety of money services businesses, not just banks. This Court has defined "relating to" broadly in the statutory context as "in respect to; in reference to; in regards to." *Snowden v. Kittitas Cnty. Sch. Dist.*, 38 Wn.2d 691, 698, 231 P.2d 621 (1951) (broadly construing statute exonerating school districts with regards to 'any act . . . relating to any park, playground . . ."). Thus,

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Leslie E. Linfield, *Uniform Debt Management Services Act: Regulating Two Related—Yet Distinct—Industries*, 28 Am. Bankr. Inst. J. 50, 51 (2009).

RCW 18.28.010(2)(b) applies broadly to *any* entity that is otherwise regulated in regards to its financial operations.

Plaintiffs concede that the intent of RCW 18.28.010(2)(b) is to exclude institutions licensed and regulated under other provisions of state and federal law. *See* Pls.' Br. at 17–19. Nevertheless, Plaintiffs argue that RCW 18.28.010(2)(b) should be construed narrowly "in a manner that is consistent with the terms and spirit of that legislation." *See id.* at 17. This argument ignores not only the broad language of the exclusion but also the clear intent to exclude already regulated entities and to apply the remedial provisions of the Washington Act to otherwise unregulated debt adjusters.

This Court confirmed the intent to exclude otherwise regulated entities when considering a nearly identical statutory exclusion from the 1941 Small Loan Act. *Kelleher v. Minshull*, 11 Wn.2d 380, 390, 119 P.2d 302 (1941) (interpreting the language "This Act shall not apply to any person doing business under and as permitted by any law of this state or of the United States relating to . . ."). In *Kelleher*, the Court determined that "the legislature undoubtedly concluded that the persons exempted from the operation of the act were sufficiently regulated and controlled by the terms of specific statutes previously enacted to regulate such persons and the businesses in which they are engaged." *Id.* at 390. Additionally, the Court should avoid interpretations that subject entities to multiple,

inconsistent layers of regulation. *State v. Yokley*, 91 Wn. App. 773, 780–81, 959 P.2d 694 (1998) (reasoning that the Explosives Act and Fireworks Act reasonably should be construed to avoid "duplicative regulation").

This conclusion is consistent with the inclusion of consumer loan companies in RCW 18.28.010(2)(b). The Consumer Loan Act requires, among other things, that consumer loan companies be licensed, have background checks, disclose their business history, and maintain a surety bond. RCW 31.04.045. The Act also sets limitations on the interest rates and fees a company may charge. RCW 31.04.105. Thus, the Legislature deemed the debt adjusting statute inapplicable to such businesses, even if their activities technically fall within the definition of debt adjusting.

As noted above, the exclusion in RCW 18.28.010(2)(b) does not apply only to the enumerated entities, it applies broadly to entities doing business under laws *relating to* the listed entities. This includes a much wider range of separately regulated money services business than those set out in the statute. For example, since 2003, money transmitters have been subject to regulation and licensure requirements pursuant to chapter 19.230 RCW. Under this chapter, when a company seeks licensure, the state thoroughly investigates the company's "financial condition and responsibility, financial and business experience, competence, character, and general fitness." RCW 19.230.070. After licensure, companies must,

among other things, annually report their permissible investments, financial statements, proof of adequate surety, and locations of operation. RCW 19.230.110. Moreover, like other money services businesses, money transmitters are federally regulated under the Bank Secrecy Act, which is a law relating to banks. 31 U.S.C.A. § 5312(a)(2)(R) (2001).

For these reasons, the Court should, in response to Certified Question No. 2, construe RCW 18.28.010(2)(b) consistent with its language and intent to exclude from the Washington Act a broad range of separately regulated money services businesses such as account administrators.

VI. CONCLUSION

For the foregoing reasons, NoteWorld respectfully requests that the Court determine that account administrators are not debt adjusters under the Washington Act.

RESPECTFULLY SUBMITTED this 14th day of February, 2011.

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APPENDIX A

HOUSE BILL NO. 16: Regulating debt adjusting

Judiciary Subcommittee Rec. #1

Purpose: To protect debtors and their creditors from unscrupulous practices of debt adjusters, regulate the amount of fee and how it is taken, and provide for qualified and financially sound debt adjusting services.

Background: One of the most flagrant areas of abuse in the consumer protection field cited by the attorney general's office to the Judiciary Subcommittee is the business of debt adjusting. Debt adjusters (proraters or credit counselors) contract with a debtor who has multiple creditors to receive one monthly payment from the debtor and distribute the amount, less a fee, to the creditors. Abuses include taking an exorbitant fee, failing to get the cooperation of large creditors without telling the debtor, and taking the fee "off the top," that is, with the major part of the first few payments taken as fee. As a result of these practices the debt adjuster has no incentive to carry the debtor through such a program until his creditor's are paid, the debtor has added another creditor in the debt adjuster, debt adjusters actually withhold more from the payments than they contract to do, the debtor is garnisheed and often ends up going through personal bankruptcy. As of August, 1964, six states (California, Illinois, Michigan, Minnesota, Oregon and Wisconsin) regulate the business of debt adjusting; and 20 states prohibit the business altogether. There is presently no regulation in Washington. Since a legitimate debt adjuster can perform a genuine service and prevent personal bankruptcys, the Legislative Council decided to propose regulating the industry instead of prohibiting it; with the reservation that if serious abuses still prevail after a reasonable period of regulation, legislation could be introduced to prohibit debt adjusting. A group of debt adjusters themselves proposed legislation, which proposal was considered in conjunction with the regulatory laws of Oregon and California in preparation of the draft of HB 16.

Summary: (1) "Debt adjuster" defined as one who receives funds for distribution among creditors of debtor; exemptions include attorneys, escrow agents, accountants, teachers, securities dealers or advisers, certain financial institutions, regular employees of debtor, public officers, persons acting under court order or liquidating a partnership or corporation (Sec. 1)

(2) Debt adjuster, debt adjusting agency, each branch office, must be licensed by director of department of motor vehicles (Sec. 2). Investigation fee of $50, licensing fee of ~~$25~~ $50 annually, examination fee of $20 (Sec. 3). Annually renewable $10,000 surety bond for each debt adjusting agency and branch office but not employees (Sec. 4); debtor or director may bring action on bond within 3 years after expiration of license issued thereon (Sec. 5).

(3) License issued if fees paid, no criminal record or license revoked elsewhere, individual applicant over 21 and resident of state for one year and passes exam and not employee of retail business, collection agency or process serving business (Sec. 6).

(4) Fee limited to 15% of total debts,and no more than 15% of any payment may be taken as fee except for up to $25 setting-up charge; default penalty limited to lesser of 6%of remaining indebtedness or $75; no fee allowed until all listed creditors notified (Sec. 8). At least 60% of each payment distributed to creditors within 40 days, no more than 25% in debtor's undistributed reserve account which must be distributed upon default except for default penalty; accounting to debtor every 6 months and within 10 days on demand; permanent record for 6 years of all receipts and disbursements open for inspection by director (Sec. 11). Contracts must disclose debts, payment schedule, and fees (Sec. 10). Trust relationship between debt adjuster and debtor (Sec. 15).

(5) Debt adjusters prohibited from lending money or credit, taking power of attorney or confession of judgment, using promissory notes, deceptively advertising, offer or pay referral fees to others, disclose confidential information to others (Sec. 12-13). Assignment of wages not prohibited (Sec. 14).

(6) Violation misdemeanor (Sec. 19). Attorney general may enforce (Sec. 20-2